

Message Text

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EXDIS

FOR D/LOS - AMBASSADOR BREWSTER ONLY FROM MR. OXMAN

USDEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS

1) BEGIN UNDERLINE COMMITTEE II: END UNDERLINE IN DEFINING
OPTIONS AVAILABLE REGARDING THE LEGAL STATUS OF THE ECONOMIC
ZONE, WE START FROM THE PREMISE THAT DEFINING IT SPECIFICALLY
AS A ZONE OF NATIONAL JURISDICTION OR SPECIFICALLY AS
A ZONE BEGIN UNDERLINE SUI GENERIS, END UNDERLINE I.E.,
ONE THAT IS NEITHER HIGH SEAS NOR TERRITORIAL SEA, IS NOT
IN OUR NATIONAL INTERESTS, ESPECIALLY OUR SECURITY IN-
TERESTS. THERE ARE THREE OPTIONS THAT SHOULD BE CONSI-
DERED, HOWEVER:

OPTION NO. 1: ANEND ARTICLE 75 TO READ:

"THE TERM 'HIGH SEAS' AS USED IN THE PRESENT CON-
VENTION MEANS ALL PARTS OF THE SEA THAT ARE NOT
INCLUDED IN THE TERRITORIAL SEA OR IN THE INTERNAL
ARCHIPELAGIC WATERS OF A STATE, OR IN THE ARCHI-
PELAGIC WATERS OF ARCHIPELAGIC STATES, PROVIDED
THAT THE PROVISIONS OF THIS CHAPTER SHALL APPLY TO
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THE EXCLUSIVE ECONOMIC ZONE ONLY INsofar AS THEY ARE NOT

INCOMPATIBLE WITH THE PROVISIONS OF CHAPTER III."

THIS AMENDMENT INSURES THAT EXCEPT FOR THE RESOURCES AND CERTAIN OTHER RIGHTS OF THE COASTAL STATE UNDER THIS CONVENTION, THE FREEDOMS OF THE HIGH SEAS (INCLUDING MILITARY USES) ARE PROTECTED. THIS AMENDMENT WAS PUT FORTH BY THE UNITED STATES AT THE LAST SESSION OF THE CONFERENCE, AND IS ACCEPTABLE TO OUR WESTERN EUROPEAN ALLIES FOR THE MOST PART AND TO THE SOVIET UNION. IT IS ALSO ACCEPTABLE TO A LARGE NUMBER OF LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES. IT WOULD, HOWEVER PROBABLY BE UNACCEPTABLE TO MOST MEMBERS OF THE GROUP OF 77 AND IN OUR VIEW IS NOT NEGOTIABLE. THERE IS, HOWEVER, FULL SUPPORT WITHIN THE EXECUTIVE BRANCH FOR THE AMENDMENT.

OPTION NO. 2: AMEND ARTICLE 75 TO READ:

"THE TERM 'HIGH SEAS' AS USED IN THE PRESENT CONVENTION MEANS ALL PARTS OF THE SEA THAT ARE NOT INCLUDED IN THE TERRITORIAL SEA OR INTERNAL WATERS OF A STATE, OR IN THE ARCHIPELAGIC WATERS OF AN ARCHIPELAGIC STATE, PROVIDED THAT THE EXCLUSIVE ECONOMIC ZONE IS NOT HIGH SEAS WITH RESPECT TO THE EXERCISE OF THE COASTAL STATE'S RIGHTS PROVIDED FOR IN THIS CONVENTION."

THIS OPTION HAS THE SAME LEGAL EFFECT AS OPTION 1, BUT HAS THE ADVANTAGE OVER OPTION NO. 1 THAT IT CLEARLY STATES THAT THE ECONOMIC ZONE IS NOT HIGH SEAS FOR CERTAIN PURPOSES. THIS AMENDMENT WAS PROPOSED AT THE LAST SESSION BY AUSTRALIA AND COULD BE SUPPORTED BY OUR WESTERN EUROPEAN ALLIES, THE SOVIET UNION, LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, AND POSSIBLY CERTAIN MODERATES AMONG THE GROUP OF 77. THIS AMENDMENT IS POTENTIALLY NEGOTIABLE, ALTHOUGH HAVE TO BE ISOLATED IN THE CONFERENCE OR SILENCED BY DIRECT BILATERAL PRESSURE FOR US TO HAVE A REASONABLE CHANCE OF SUCCEEDING WITH IT. THIS AMENDMENT IS ACCEPTABLE TO ALL AGENCIES WITHIN THE EXECUTIVE BRANCH AND MAY WELL BE SECRET

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VIEWED BY THE DEPARTMENT OF DEFENSE AS THE "BOTTOM LINE."

OPTION NO. 3: AMEND ARTICLE 75 TO READ:

"(1) THE PROVISIONS OF THIS CHAPTER APPLY TO ALL PARTS OF THE SEA THAT ARE NOT INCLUDED IN THE EXCLUSIVE ECONOMIC ZONE, IN THE TERRITORIAL SEA, OR IN THE INTERNAL

WATERS OF A STATE, OR IN THE ARCHIPELAGIC
WATERS OF AN ARCHIPELAGIC STATE.

(2) NOTWITHSTANDING PARAGRAPH (1)
ABOVE, THE PROVISIONS OF SECTION 1 OF
THIS CHAPTER, AS WELL AS OTHER PERTINENT
RULES OF INTERNATIONAL LAW, SHALL APPLY
TO THE EXCLUSIVE ECONOMIC ZONE INSOFAR
AS THEY ARE NOT INCOMPATIBLE WITH THE PRO-
VISIONS OF CHAPTER III.

(3) TREATIES RELATING TO THE HIGH SEAS
COMPATIBLE WITH THE PROVISIONS OF CHAPTER
III SHALL APPLY TO THE EXCLUSIVE ECONOMIC
ZONE."

THIS OPTION IS A LEGALLY MORE PRECISE VARIANT OF THE SOVIET
FALLBACK OF COMPLETELY DELETING ANY DEFINITION OF THE HIGH
SEAS. IT IS THE LEGAL -- BUT NOT PSYCHOLOGICAL OR VERBAL --
EQUIVALENT OF OPTION 1. IT WOULD PROBABLY BE ACCEPTABLE
TO THE WESTERN EUROPEAN ALLIES, THE SOVIET UNION, THE
LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES, AS WELL
AS THE MODERATE LESSER DEVELOPED COUNTRIES. IT WOULD BE
MORE NEGOTIABLE THAN OPTIONS 1 OR 2, BUT DOES NOT, SPECIFICALLY,
LINK THE WORDS "HIGH SEAS" TO THE ECONOMIC ZONE. THIS AMEND-
MENT WOULD BE DIFFICULT TO SELL TO THE DEPARTMENTS OF
DEFENSE AND COMMERCE.

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